

REMARKS

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Claim Amendments

Claim 1 has been amended to incorporate the limitations of claim 4, as a result of which claims 4 and 10 have been cancelled, without prejudice. Claim 1 has also been amended to delete the limitation, "so that soybean 7S protein can be detected by SDS PAGE". Claim 11 has also been cancelled, without prejudice.

No new matter has been added to the application by these amendments.

Rejection Under 35 U.S.C. § 112, First Paragraph

The rejection of claims 1, 4, 5, 7, 10 and 11 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, has been rendered moot by the above-discussed claim amendments.

Consideration After Final Rejection

Although this amendment is presented after final rejection, the Examiner is respectfully requested to enter the amendments and consider the remarks, as they place the application in condition for allowance.

Patentability Arguments

The patentability of the present invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Rejection Under 35 U.S.C. § 103(a)

The rejection of claims 1, 4, 5, 7, 10 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Niwano et al. in view of Youngquist and Spicer is respectfully traversed.

Examiner's Position

The Examiner takes the position that Niwano et al. disclose a method of preparing a shaped food product, comprising expanding hydrated dough comprising soybean protein by heating, where the heating is done by oven or microwave irradiation. The Examiner states that the dough of Niwano et al. comprises protein and starchy substances, and that Example 16 discloses that the dough is heated in an oven until the water content is in the range of 25-30%. The Examiner admits that Niwano et al. fail to teach or suggest 1) that the protein is soybean 7S protein, 2) drying the dough after heating, 3) the amount of protein and starchy substance as claimed, and 4) drying under the temperature as claimed.

The Examiner states that Youngquist discloses a shaped textured protein food product, and teaches the use of 7S soybean protein as an excellent binder for textured protein food products. The Examiner also states that Spicer discloses a process of making an expanded product, including drying the dough after expansion at a temperature in the range of about 110 -120 degree F.

The Examiner asserts that it would have been obvious to one skilled in the art to use the 7S soybean protein as taught by Youngquist. The Examiner also states that it would have been obvious to dry the dough after heating depending on the moisture content wanted in the final product, and that such parameter can readily be determined by one skilled in the art. The Examiner also asserts that it would have been obvious to one skilled in the art to determine the appropriate temperature, and that the claimed temperature range is conventional as evidenced by Spicer.

Applicants' Arguments

Initially, it should be noted that the food of Niwano et al. is one which uses a conventional soybean protein. Niwano et al. fail to teach or suggest a food obtained by expanding dough containing a large amount of the specific protein, i.e. not less than 30% of soybean 7S protein, as required by Applicants' claims.

As discussed above, the Examiner has relied on Youngquist as teaching the 7S soybean protein. Although Youngquist does disclose soybean 7S protein, the protein is taught as a mere binder. Therefore, even if the teachings of Niwano et al. and Youngquist are combined, as suggested by the Examiner, the combined teachings do not teach or suggest a food obtained by expanding dough comprising not less than 30% of soybean 7S protein, as required by Applicants' claims.

The Examiner addresses the references' lack of teaching the amount of protein by generically stating, “[i]t would also have been obvious to determine the appropriate amount of protein . . . depending on the type of product made.” However, the Examiner has provided no evidence to support this broad assertion.

MPEP 2142 states that the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reasons why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (S. Ct. 2007) noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (Emphasis added). See also *KSR*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Based on the clear standards set forth by the Supreme Court, the Federal Circuit, and the MPEP, the Examiner has not met the required burden. Specifically, the Examiner has made a prohibited conclusory statement regarding the amount of protein, in an attempt to meet this claim limitation. In effect, it appears that the Examiner has disregarded the limitation that the hydrated dough comprise not less than 30% by weight

of soybean 7S protein. Accordingly, for this reason alone, Applicants assert that the rejection of record is untenable and should be withdrawn.

Furthermore, the Spicer reference relates to a wheat protein, and the heating is carried out using an extruder. This is completely different from heating by sandwich baking or microwave heating, as required by Applicants' amended claims. Therefore, Spicer is irrelevant to the presently claimed invention.

Even if Spicer is combined with the teachings of Niwano et al. and Youngquist, this combination still fails to teach or suggest the presently claimed invention.

For above reasons, Applicants' pending claims are clearly patentable over the cited combination of references.

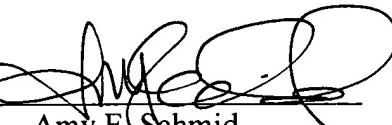
Conclusion

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

If, after reviewing this Amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, the Examiner is respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

Toshimitsu BABA et al.

By: 
Amy E. Schmid
Registration No. 55,965
Attorney for Applicants

AES/nrj
Washington, D.C. 20006-1021
Telephone (202) 721-8200
Facsimile (202) 721-8250
April 30, 2008